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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,943	06/26/2000	Jason Kent Swanson		2953

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 04/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/602,943**

Applicant(s)  
**Swanson**

Examiner  
**Bruce A. Lev**

Art Unit  
**3634**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 12, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on Sep 4, 2001 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

**BRUCE A. LEV**  
**PRIMARY EXAMINER**

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 27-29 are objected to because of the following informalities:

As concerns claim 27, the phrase "affixed to a 90-degree angle" should read --affixed at a 90-degree angle--.

As concerns claim 28, the phrase "aan" should read --an--.

As concerns claim 29, a claim should be only one sentence, therefore the period after "parallel rods" should be deleted.

### ***Claim Rejections - 35 USC § 112***

2. Claims 21-26, 29 and 31-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claim 21, the phrases "locking mechanism means" and "movable framework means" are vague and indefinite. More appropriate phrases may be "means for locking" and "a framework having a means for moving" respectively. Further, the phrase "to serve" should read "operatively connected to".

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As concerns claim 22, the phrase "the central cross piece" lacks antecedent basis and therefore renders the claim as vague and indefinite.

As concerns claims 24, 25, and 29, the phrase "movable framework means" is vague and indefinite. A more appropriate phrase may be "a framework having a means for moving".

As concerns claims 31-36, the phrases "base structure means", "rotatable axle assembly means", "mounting bracket means", "locking mechanism means" etc. are vague and indefinite. The examiner suggests dropping the "means" phrase from these terms, i.e., "base structure" etc.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21- are rejected under 35 U.S.C. 103(a) as being unpatentable over Trout et al 5,439,074 in view of McClung 4,069,891.

As concerns claim 21, Trout et al set forth a tree stand comprising a base 70 having strap means 110; a rotatable axle (for rotation parallel to the base) and bracket (inclusive of member 40) and a locking mechanism (inclusive of friction); a movable framework (inclusive of member 52) mounted to the bracket and a platform (part of member 62). *What Trout et al do not set*

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*forth* is the rotatable axle extending from the base. However, *McClung teaches* extending a rotatable axle assembly 105 from its base member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tree stand of Kelly by constructing the rotatable axle as extending from the base, as taught by McClung, in order to increase the strength of the stand, and increase the weight as to which the stand can support without collapsing.

As concerns claim 22, Trout et al set forth the base comprising a pair of parallel bars and a central cross piece.

As concerns claims 26 and 27, Trout et al set forth a pair of cross pieces angled (inclusive of 90-degrees) to anchor to a tree.

As concerns claim 28, Trout et al set forth the an end plate having holes (viewed as holes for fasteners holding the seat thereon).

As concerns claim 30, Trout et al set forth the second rods having a seat thereon.

As concerns claims 31 and 32, Trout et al set forth the tree stand, as advanced above, including a scaffold means (inclusive of members 74 and 78).

As concerns claim 36, Trout et al set forth a pair of cross pieces angled (inclusive of 90-degrees) to anchor to a tree.

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*Allowable Subject Matter*

5. Claims 23-25, 29, and 33-35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. The following is an examiner's statement of reasons for allowance:

As concerns claim 23, 29, and 33, structural limitations pertaining to the axle rod having an end plate with alignment holes, and a locking pin to lock the plate at a chosen alignment hole, along with the other structural limitations are neither taught nor suggested by the prior art of record.

*Response to Amendment*

4. Applicant's remarks filed February 12, 2002 have been fully considered but are deemed moot due to the new grounds of rejection as advanced above.

*Conclusion*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Applicant's amendment, including new claims 21-36 and their structural limitations therein, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

*Conclusion*

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

April 12, 2002



*Bruce A. Lev*

*Primary Examiner*

*Group 3600*